

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7066

Petition of Vermont Department of Public)
Service for an Investigation into the)
Universal Service Fund Charge for Fiscal)
Year 2005)

Order entered: 7/15/2005

I. INTRODUCTION

Pursuant to 30 V.S.A. § 7523, the Vermont Public Service Board ("Board") must establish the Universal Service Fund surcharge rate for each fiscal year which starts on July 1 and runs through June 30th. In this proceeding, the Vermont Department of Public Service ("DPS") and Verizon New England Inc., d/b/a Verizon Vermont ("Verizon-Vermont"), have entered into a stipulation asking the Board to maintain the current rate of 1.27% for the month of July, 2005,¹ and then to approve a rate reduction to 1.15% for the remaining months in Fiscal Year 2006 ("FY 06"). Based on the projections submitted as record evidence, the proposed rate will generate sufficient funds to meet the financial obligations of the Vermont Universal Service Fund ("VUSF"). Therefore, I recommend that the Board approve and adopt the terms of the stipulation.

Background

The Board is required to enter an order setting the rate for each upcoming fiscal year by June 15, unless the Vermont General Assembly does not enact an authorization amount for Enhanced-911 services ("E-911") by May 15, in which case the Board may defer its decision until 30 days after the E-911 authorization is established. The FY 06 appropriation for E-911 was established when the Governor signed the state appropriation bill H.516 on June 21, 2005. Therefore, the Board's decision must be issued on or before July 21, 2005.

1. The current USF charge must remain in place for the month of July, 2005 because the State's budget was not approved until June 21, 2005, and participating telecommunications providers will be unable to implement billing changes by the time this Order is issued.

Procedural History

In accordance with 30 V.S.A. § 7523, the DPS petitioned the Board on April 14, 2005, requesting the Board to temporarily establish a VUSF surcharge rate of 2% for the fiscal year beginning July 1, 2005. On May 11, 2005, a prehearing conference was held to determine the schedule for this proceeding. Immediately after the prehearing conference, I conducted an informal workshop with the parties² to review the DPS's preliminary estimates of FY 06 revenues and disbursements. On June 8, 2005, a status conference was held to consider a new schedule as the E-911 budget had not been approved. At the status conference, the parties discussed the impact of the delay in the enactment of the State Budget on the Board's ability to establish the VUSF rate, given the time constraints imposed under statute and other commitments. On June 30, 2005, the DPS submitted testimony and exhibits modifying its request. In its modified request, the DPS asked the Board to maintain the current surcharge rate of 1.27% for the month of July, 2005, and then decrease the rate to 1.15%, thereafter. Along with the testimony and exhibits, the DPS also submitted a stipulation between the DPS and Verizon-Vermont. Simultaneously with these filings, the DPS sent, by regular and electronic mail, copies of the documents filed with the Board to the parties in this proceeding. In its transmittal letter, the DPS recommended that the Hearing Officer establish July 8 as the deadline date for submitting comments on their filing due to time constraints. On July 1, 2005, Cassandra LaRae-Perez, Esq., of Primmer and Piper P.C., on behalf of the nine independent telephone companies, filed a letter with the Board requesting that the Hearing Officer deny the DPS's request to shorten the comment period that is customarily allowed under Board Rule 2.207. In its letter filing, the Independents stated that they were "mindful of the time constraints imposed by statute" but would "endeavor" to respond by July 8, 2005. On July 6, 2005, the Clerk's office informed the parties that comments on the DPS's filings were to be submitted by July 8, 2004.

2. The parties in this proceeding are: Dixie Henry, Esq., for Vermont Department of Public Service; Linda Ricci, Esq., for Verizon New England Inc., d/b/a Verizon-Vermont; Paul Phillips, Esq., Cassandra LaRae-Perez, Esq., of Primmer and Piper, P.C., for Shoreham Telephone Company, Inc.; Topsham Telephone Company, Inc.; Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom; Ludlow Telephone Company; Franklin Telephone Company; STE/NE Acquisition Corp., d/b/a Fairpoint New England, d/b/a Northland Telephone Company of Vermont; and Vermont Telephone Company, Inc., d/b/a VTel (collectively, the "Independents").

On July 8th, the Independents submitted comments expressing their dissatisfaction with the DPS for not providing them with a copy of the DPS's testimony and accompanying exhibits.³ The Independent's noted that they have no objections to the stipulation and the admission of the DPS's prefiled testimony and exhibits. The Independents also offered what they have characterized as technical corrections to the DPS's proposed Decision.

Stipulation

The DPS and Verizon-Vermont (hereafter, referred to as the Stipulating Parties) have agreed that the Board should set the FY 06 VUSF surcharge at 1.27% for the month of July, 2005, and 1.15% for the balance of the 2006 fiscal year. The Stipulating Parties have also agreed that the Hearing Officer may make findings in this docket that are consistent with the stipulation and testimony of Department witness Deena Frankel. The Independents stated that they have no objections to the provisions agreed to by Verizon-Vermont and the DPS. The Stipulating Parties further agree that the stipulation shall not have precedential effect on future proceedings involving the DPS or the other parties, except to enforce the stipulation.

II. FINDINGS

Based upon the stipulation and the prefiled testimony and accompanying exhibits of the DPS, the Hearing Officer reports the following findings in accordance with 30 V.S.A. § 8.

Carry-forward Fund Balance

1. The FY 05 ending VUSF cash balance that will be carried forward as the FY 06 beginning cash balance is projected to be \$1,046,084. Frankel pf. at 6; exh. DPS-DLF-1.
2. The FY 06 ending VUSF cash balance is estimated to be \$466,931, assuming estimates for VUSF program disbursements are accurate and projected revenues materialize. Exh. DPS-DLF-1.

Revenues and Fund Balance

3. The Independent's did obtain copies of the DPS's proposed order for decision and the stipulation from Verizon-Vermont on the evening of June 27, 2005.

3. Each year the National Exchange Carrier Association ("NECA") provides an estimate of eligible intrastate telecommunications revenues for all companies operating in Vermont. This year, NECA estimated that FY 05 revenues (ending June 30, 2005) will amount to approximately \$396,926,976. NECA's projections, which were submitted in April, 2005, are based on actual revenues through the end of February, 2005 and estimates for the remaining months of the fiscal year. For FY 06, NECA estimates that total Vermont revenues will be .86% more than FY 05 revenues, or approximately \$400,340,548. Frankel pf. at 5.

4. Applying the recommended VUSF surcharge of 1.27% for July 2005 and 1.15% for the remaining months of FY 06 against the estimated FY 06 total revenue of \$396,926,976 will generate FY 06 VUSF revenues of approximately \$4,604,353.⁴ Exh. DPS-DLF-1.

5. The FY 06 surcharges will produce an estimated cash balance of \$466,931⁵ at the end of FY 06, after total program disbursements of \$5,183,506, assuming the total number of Lifeline recipients grows by 1%, Vermont Telecommunications Relay Service ("VTRS") billable minutes of use remain stable, and Vermont-based telecommunications revenues materialize as anticipated. Exhs. DPS-DLF-1, 2 and 3.

6. A fund balance of this amount ensures that fluctuations in monthly cash flow will not require borrowing by the fiscal agent in order to make authorized disbursements and ensures that temporary deviations between projected and actual revenues and expenses do not interfere with the daily operation of the USF programs. Frankel pf. at 6.

Disbursements

7. VUSF disbursements are permitted under 30 V.S.A. § 7511 for the following purposes: to make payments to the fiscal agent for services rendered under contract; to support the VTRS; to support the Vermont Lifeline program; and to support E-911 services. Frankel pf. at 3.

Disbursements to the Fiscal Agent

8. The estimated costs of the fiscal agent from July 1, 2005, through June 30, 2006, is \$141,500. The proposed budget includes \$111,500 for administration of the USF programs and

4. While NECA anticipated a .86% increase in Vermont telecommunications revenues, the Stipulating Parties have assumed zero growth in total revenues for the purpose of establishing a FY 06 VUSF surcharge rate.

5. Determined by adding the FY 05 ending cash balance of \$1,046,084 to the estimated FY 06 revenues of \$4,604,353, less projected program disbursements of \$5,183,506 in FY 06.

\$30,000 for independent audits of participating telecommunications carriers. Frankel pf. at 3-4; exh. DPS-DLF-1.

9. The estimated cost of an independent audit of the VUSF is \$25,000. Frankel pf. at 3-4; exh. DPS-DLF-1.

10. The total estimated FY 06 disbursements for fiscal agent and auditing services amount to \$166,500. Findings 8-9, above.

Disbursements for Telecommunications Relay Service

11. Funds to support the VTRS are disbursed to the state treasurer in an amount determined by the Commissioner of Public Service to be reasonable. 30 V.S.A. § 7512.

12. For FY 06, the estimated budget for VTRS is \$405,285. Anticipated disbursements are based on current VTRS calling trends. The projected budget includes \$30,000 to pay for outreach programs, which will be included in a separate contract that has not yet been issued. Frankel pf. at 4-5; exhs. DPS-DLF-1 and 3.

13. An additional \$75,000 has been budgeted for an equipment distribution program associated with VTRS that is authorized by 30 V.S.A. § 218a(e). This program has been administered by the Vermont Center for the Deaf and Hard of Hearing under a contract that expires on June 30, 2006, with an option for an extension of an additional two years. Frankel pf. at 4-5; exhs. DPS-DLF-1 and 3.

14. The total estimated FY 06 disbursements for VTRS amounts to \$480,285. Findings 12-13, above.

Disbursements for Lifeline

15. Funds to support the Vermont telephone Lifeline Program are disbursed to telecommunications service providers that issue Lifeline credits to end-users. 30 V.S.A. § 7513.

16. For FY 06, the estimated budget for the Lifeline program is \$1,120,690. Frankel pf. at 3; exh. DPS-2.

17. The Lifeline program costs are based on FY 05 projected average monthly enrollment trends. The amount also takes into account Lifeline credits reimbursed by the state fund, as well as the cost of providing non-published numbers to Lifeline-eligible persons who have final court approved "relief-from-abuse" orders. Frankel pf. at 4; exh. DPS-2.

18. In addition to Lifeline program costs mentioned above, FY 06 administration costs are estimated to be \$175,000. Frankel pf. at 4; exh. DPS- DLF-1.

19. The total estimated FY 06 disbursements for Lifeline amounts to \$1,295,690. Findings 16 and 18, above.

Disbursements for Enhanced 911

20. Funds to support Enhanced 911 ("E-911") services will be paid by the fiscal agent to the state treasurer for deposit into the E-911 special fund. 30 V.S.A. § 7514.

21. The E-911 budget of \$3,241,031 was established by the Fiscal Year 2006 Appropriations Act (H. 516) that sets the amount to be transferred from the VUSF to E-911. Frankel pf. at 5; exh. DPS-DLF-1.

Total Program Disbursements

22. Total disbursements for VUSF program obligations during FY 06 are projected to be \$5,183,506. Frankel pf. at 5; exh. DPS-DLF-1; findings 8 through 21, above.

Customer Notification Requirements

23. Each telecommunications service provider required to collect the VUSF should provide, in the first bill that includes the changed VUSF charge, a rate change notification. If the Order setting the rate is issued too late for the provider to place the notice in the first bill, due to the time required for printing, the notice should be included in the earliest feasible billing. Frankel pf. at 7-8; exh. DPS-DLF-4; Stipulation at ¶ 3.

24. Each local exchange carrier (both incumbent and competitive) and all wireless eligible telecommunications carriers should provide customer notification of the Lifeline program eligibility criteria and the application process during either of the first two months of the calendar year 2006. Notification during these two months is particularly important in order to inform persons who may be eligible to apply through the Tax Department's tax package issued early in January. Frankel pf. at 7-8; exh. DPS-DLF-4; Stipulation at ¶ 3.

25. The notices should be in the form designed by the DPS, and included as a part of the stipulation. Frankel pf. at 7-8; exh. DPS-DLF-4; Stipulation at ¶ 3.

III. Discussion

In this proceeding, the Board is asked to approve a stipulation that will fully fund programs that provide important telecommunications services to many Vermonters. Among these are Lifeline services, which ensure that affordable telecommunications services are

available to eligible customers; relay services for the hearing impaired; and enhanced-911 services for all customers. It is anticipated that the current rate of 1.27% for the month of July 2005, and a rate of 1.15% for the remainder of FY 06, when combined with the FY 05 ending cash balance of \$1,046,084, will generate the necessary funds to meet the forecasted FY 06 program needs without causing unnecessary disruptions in the services provided to eligible customers.

Based on the record evidence, I recommend that the Board approve the stipulation. Although the DPS has relied on a projection of FY 06 telecommunications revenues, temporarily maintaining the current rate of 1.27% for the month of July 2005 and then reducing the rate to 1.15% for the remainder of FY 06 is appropriate. The proposed charge will result in a FY 06 ending cash balance that modestly exceeds anticipated program disbursements. Such additional collections are necessary to ensure the uninterrupted operation of each VUSF program, especially in the unlikely event of disbursements temporarily exceeding revenues in a given month. Additionally, I recommend that the Board approve of the proposed program disbursements in the amount of \$5,183,506. The DPS has estimated program disbursements as a method to ensure each program has the necessary funds to provide services to eligible customers and to operate enhanced 911 services without interruption. In accordance with 30 V.S.A. § 7511, these funds are to be distributed by the fiscal agent as follows:

- a. \$141,500 payable to the fiscal agent under its contract with the Board and \$25,000 to pay for the annual audit fee;
- b. \$405,285 to support the Vermont Telecommunications Relay Service in the manner provided by section 7512 of Title 30 and an additional \$75,000 for the Vermont adaptive equipment distribution program associated with VTRS;
- c. \$1,295,690 to support the Vermont Lifeline program and administrative costs in the manner provided by section 7513 of Title 30; and
- d. \$3,241,031 to support E-911 services in the manner provided by section 7514 of Title 30.

Customer Notification Requirements

There is no dispute among the parties concerning the customer notification requirements. Informing customers of service opportunities ensures a broad opportunity for program participation by all qualifying ratepayers. I recommend that the Board adopt and order these

notification requirements of all carriers certified to provide telecommunications services in Vermont, including wireless eligible telecommunications carriers. Requiring wireless carriers to notify customers is consistent with the Eligible Telecommunications Company notification and advertising conditions.

Comments of the Independents

On July 8, 2005, the Independents filed comments offering what they characterize as technical corrections to the DPS's proposal for decision. The comments of the Independent's have been incorporated herein.

Opportunity to File Exceptions and Present Arguments

The Stipulating Parties and the Independents have waived their opportunity to file exceptions and present arguments pursuant to 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 13th day of July, 2005.

s/Thomas S. Lyle

Thomas S. Lyle
Hearing Officer

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted.
2. The Vermont Universal Service Fund charge shall be 1.27% for the month of July 2005 and shall be 1.15% effective August 1, 2005, remaining in effect through June 30, 2006, unless revised in the manner provided by law.
3. Each telecommunications service provider, including wireless eligible telecommunications carriers, required to collect the USF charge shall provide notification of the Lifeline eligibility criteria and application process during either of the first two months of calendar year 2006. All notices shall conform to the language contained in exhibit DPS-DLF-4. If, after negotiation, a telecommunications service provider and the DPS cannot agree on the form of the notice, then the parties can petition the Board for resolution of the conflict.
4. The fiscal agent is directed to pay the following amounts for Fiscal Year 2006, and according to the following priority:
 - a. The fiscal agent shall transfer to its own account no more than the sum permitted under contract between the Board and the fiscal agent. The amount is not expected to exceed \$141,500 for the fiscal year. In addition, pursuant to the Fiscal Agent's contract with the Board, the Fiscal Agent may request, upon 30-days' written notice to the Board and the DPS, an additional \$25,000 to be transferred to its own account to pay for the cost of an independent audit of the VUSF.
 - b. The fiscal agent shall transfer to the State Treasurer, in monthly payments, funds necessary to adequately support the Vermont Telecommunications Relay Service and an additional \$75,000 for the Vermont Equipment Distribution Program associated with VTRS and carried out by an independent contractor. In no event shall the sums transferred exceed \$480,285 during Fiscal Year 2006, unless otherwise approved by the Board.
 - c. The fiscal agent is directed to pay for legitimate and reasonable claims from local exchange carriers for credits and reimbursable expenses under the Vermont Lifeline program. It is anticipated that the annual total of all such claims will amount to \$1,120,690. In addition, the Fiscal Agent is directed to pay for reasonable costs to administer the Lifeline programs. Administration of the Lifeline program is estimated to cost an additional \$175,000 during FY 06. In no event, however, shall the sums for the Lifeline programs exceed \$1,295,690.
 - d. The fiscal agent is authorized to make monthly transfers to the State Treasurer to support enhanced-911 services at an annual rate of no more than \$3,241,031.

5. The Board shall retain jurisdiction over this docket to make any further orders that may be required to administer the Vermont Universal Service Fund. Thomas Lyle is designated as Hearing Officer to consider and report upon any further proceedings that may be appropriate in this docket.

DATED at Montpelier, Vermont, this 15th day of July, 2005.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: July 15, 2005

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.